



# UNITED STATES PATENT AND TRADEMARK OFFICE

SP

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,791	01/13/2004	Bradley Q. Niemann	713102.162	1790

27128 7590 03/21/2005

BLACKWELL SANDERS PEPER MARTIN LLP  
720 OLIVE STREET  
SUITE 2400  
ST. LOUIS, MO 63101

EXAMINER

PATEL, MITAL B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/707,791

Applicant(s)

NIEMANN, BRADLEY Q.

Examiner

Mital B. Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-15 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment/Arguments*

1. Applicant's arguments, filed 12/21/04, with respect to the rejection(s) of claim(s) 1-6, 9-11, 14 and 15 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Flatland et al (US 5,752,938).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Flatland et al (US 5,752,938).

4. **As to claim 1**, Flatland et al teaches a neck seal for use in an emergency breathing apparatus having an interior and an exterior; the neck seal **30** comprising an annular sheet of elastomeric material (**See Col. 5, lines 47-67 and Col. 6, lines 43**) having a substantially central aperture **38** for donning over a person's head, the substantially central aperture being sized appropriately for snug fitting around the person's neck so as to be sufficiently tight to prevent passage between the person's neck and the neck seal of fluid materials without choking the person; wherein the

Art Unit: 3743

annular sheet of elastomeric material is coated at least in part with parylene (**See Col. 5, lines 47-67 and Col. 6, lines 43**) to thereby prevent passage through elastomeric material of NBR/CBR materials; and wherein the central aperture of the annular sheet has a contiguous collar **54,62,66** extending from the central aperture's inner edge for forming a fluid-tight interface surface with the wearer's neck (**the Examiner contends that the intended use of Flatland et al's neck seal is different from that of the instant application; however, Flatland et al does teach all of the structure that is presented in the body of the claim, thereby making the 102 (b) rejection proper since Applicant has not distinguished the structure of the present application from that of Flatland et al**).

5. As to claim 7, Flatland et al teaches a neck seal wherein the parylene coating on the annular sheet is coated on a substantially silicone elastomeric annular sheet (**See Col. 5, lines 50-58 and lines 60-67**).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3743

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 2-6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flatland et al (US 5,752,938).

9. **As to claims 2 and 8**, Flatland et al teaches essentially all of the limitations except for the particulars with respect to the coating thickness of the parylene.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a proper amount of coating thickness based on the intended use.

Furthermore, Applicant has not provided a reasoned statement as to why this particular thickness solves a stated problem or provides unexpected results over any other thickness, and as such one of ordinary skill in the art would expect the thickness as taught by Flatland et al to work equally as well.

10. **As to claim 3**, Flatland et al teaches a neck seal wherein the neck seal has a first side and a second side and is substantially entirely coated with parylene on at least one of the first side and the second side (**See Col. 5, lines 47-67 and Col. 6, lines 43**).

11. **As to claim 4**, Flatland et al teaches a neck seal wherein the first side is disposed facing the interior of the emergency breathing apparatus and is substantially entirely coated with parylene (**See Col. 5, lines 47-67 and Col. 6, lines 43**).

12. **As to claim 5**, Flatland et al teaches a neck seal wherein the second side is disposed facing the exterior of the emergency breathing apparatus and is substantially entirely coated with parylene (**See Col. 5, lines 47-67 and Col. 6, lines 43**).

Art Unit: 3743

13. **As to claim 6**, Flatland et al teaches a neck seal wherein both the first side and the second side of the neck seal are substantially entirely coated with parylene (**See Col. 5, lines 47-67 and Col. 6, lines 43**).


***Allowable Subject Matter***

14. Claims 9-15 are allowed over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Mital B. Patel  
Examiner  
Art Unit 3743

3/17/05